

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DWIGHT PURK,

Plaintiff, : Case No. 3:12-cv-174

-vs- : District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

CHINA EAST RESTAURANT,

Defendant.

ORDER

This case is before the Court on Plaintiff's Request (Doc. No. 5) to the Clerk to send the Complaint back to him "so I can file it in Cincinnati USDC Chief Dlott. Or you can transfer the case. I will pay her \$50.00 a month on the filing fee, since Merz would not except [sic]."

Upon initial filing, the Magistrate Judge recommended on June 15, 2012, that Mr. Purk not be permitted to proceed *in forma pauperis* or on the monthly payment plan he suggested at the time because of his failure to demonstrate he had satisfied any part of the sanctions imposed on him by the Sixth Circuit in 2003. Mr. Purk was advised of his right to object to that recommendation and never did so. After his time for objecting expired with no filing, Judge Rose adopted the Magistrate Judge's recommendation on July 5, 2012 (Doc. No. 4). That determination is final. Judge Rose exercised this Court's jurisdiction completely when he adopted the recommendation. The Judicial Code does not give a Chief District Judge authority to overrule another judge's final decision. Mr. Purk has the right to appeal to the Sixth Circuit by August 4, 2012, but the filing fee

for an appeal is \$455 and by not objecting to the Report and Recommendations, Mr. Purk waived any issue he might have had for appeal.

The Request is DENIED.

July 18, 2012.

s/ *Michael R. Merz*
United States Magistrate Judge